ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION I

CACR07-1090

March 19, 2008

JERRY LEE MARSHALL
APPELLANT

AN APPEAL FROM CLEVELAND COUNTY CIRCUIT COURT
[CR2006-44]

V.

HON. LARRY W. CHANDLER, JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED

Jerry Marshall appeals from two convictions for possession of a firearm by certain persons. He argues that the State failed to present sufficient proof that he possessed a firearm. We disagree and affirm his convictions.

Appellant was charged with two counts of being a felon in possession of a firearm, pursuant to Ark. Code Ann. § 5-73-103(a)(1)(Repl. 2005). Specifically, the first count charged him with possession of a .30-caliber semi-automatic rifle, a .45-caliber semi-automatic pistol, and a .22-caliber semi-automatic rifle. The second count charged him with possession of a Remington 12-gauge pump shotgun.

A jury trial was held during which the following evidence was adduced. The police recovered the .22-caliber rifle and the .30-caliber carbine (and a bag of ammunition fitting both guns) from Danny King, a longtime friend of appellant's. King testified that in May 2006, appellant personally handed him the guns and ammunition to keep while appellant visited Texas, and that appellant never picked them up when he returned. Additionally, King

testified that he complied with appellant's further request to go to appellant's house and retrieve a pistol that was located under the mattress in appellant's bedroom. The police also recovered the .45-caliber pistol from King, who identified State's Exhibits Five, Six, Seven, and Eight as the guns and ammunition that he stored for appellant.

Demorse McCloud, appellant's nephew, testified that appellant asked him to borrow a 12-gauge shotgun to use for hog hunting. McCloud said that he brought the gun to appellant's house in April 2006 and laid it against the wall of his house when appellant was not home. The next month, McCloud retrieved the gun from appellant's home. When McCloud arrived at appellant's home to get his gun, appellant told him which bedroom it was in, and McCloud got it. McCloud identified State's Exhibit Four as the shotgun that he lent to appellant.

Appellant testified that he voluntarily signed two written statements in which he confessed to having guns at his house. The statements were admitted into evidence with no objection. In the first statement, appellant admitted that he asked McCloud to borrow a gun for hog hunting, and that McCloud brought a 12-gauge or 20-gauge pump shotgun to his house, which he kept for a few days. Contrary to McCloud's testimony, appellant said that when McCloud came to retrieve his gun, appellant did not see him.

In the second statement, appellant asserted that before Christmas 2006, he allowed a hunting buddy to store a pistol and a rifle at his house, both of which he admitted that he touched. Additionally, appellant said that another friend brought a rifle to his house with a scope that was also stored on his property. He said the guns had been at his house since that time. Appellant admitted that he used the .30-caliber gun to hunt hogs. He denied using the pistol but admitted that he kept the pistol under his bed in case someone tried to break into his house.

At trial, appellant admitted that no one forced him to sign the statements, but he said

that he did not really read the statements before he signed them, and insisted that the officer "fixed" the statements to read as if appellant confessed to possessing the guns. At trial, appellant contradicted his statements. He testified that he had never had any of the guns in his house and denied handling or being in possession of any of the guns. Appellant explained that he allowed his hunting buddies to keep their hunting guns in his nephew's car, which sits on his property. Appellant denied that he used any gun when hunting hogs because he merely flushes out the hogs on a four-wheeler, while his friends shoot the hogs. He also denied that he instructed King to get the guns or to store them.

Appellant admitted that he asked McCloud to borrow a shotgun but insisted that he asked so that a hunting buddy could use the gun. Appellant said that he was not home when McCloud brought the gun, so his girlfriend put the gun in his nephew's car.

Further, appellant asserted that before he went to Texas, a man named DeWayne Whipple tried to sell the .45 pistol to him but he refused to buy it. King admitted that he spent one or two nights at appellant's house while he was gone to Texas; appellant maintained that Whipple stayed with King at his house.

At the close of the State's evidence, appellant moved for a directed verdict, challenging the State's proof that he possessed any of the guns. The trial court denied the motion and the subsequent renewals based on the same ground. The jury found appellant guilty on both counts and sentenced him to serve two consecutive fifteen-year prison terms.

The sole issue on appeal is whether the trial court erred in denying appellant's motion for a directed verdict. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *See Thomas v. State*, 92 Ark. App. 425, 214 S.W.3d 863 (2005). On appeal from the denial of a motion for a directed verdict, the sufficiency of the evidence is tested to determine whether the verdict is supported by substantial evidence, direct or circumstantial. *Id*. Substantial evidence is that evidence which is of sufficient force and character to compel

a conclusion one way or the other beyond suspicion or conjecture. *Id.* Circumstantial evidence may constitute substantial evidence, but it must be consistent with the appellant's guilt and inconsistent with any other reasonable conclusion. *Id.* We consider only the evidence supporting the guilty verdict and the evidence is viewed in the light most favorable to the State. *Id.* Determinations of credibility are left to the jury. *Id.*

Here, appellant does not challenge the State's proof regarding his status as a convicted felon, only its proof that he possessed the weapons. We affirm appellant's convictions because substantial evidence supports that he was a felon in possession of a .30-caliber semi-automatic rifle, a .45-caliber semi-automatic pistol, a .22-caliber semi-automatic rifle, and a Remington 12-gauge pump shotgun, in violation of Ark. Code Ann. § 5-73-103(a)(1).

Appellant seems to argue that he did not possess the guns in violation of § 5-73-103(a)(1) because he never "handled" the guns, but only allowed them to be stored in his nephew's vehicle. However, whether appellant "handled" the guns is not dispositive because the State need not prove actual, physical possession or ownership to sustain a conviction for possession of a firearm. *See Harper v. State*, 17 Ark. App. 237, 707 S.W.3d 332 (1986)(affirming a conviction for being a felon in possession of a firearm where the defendant was never seen with the firearm, which was found underneath the defendant's bedroom window, where officers spotted the defendant when they approached his house).

Constructive possession can be implied where the contraband is found in a place that is immediately and exclusively accessible to the accused and subject to his control. *See Knight v. State*, 51 Ark. App. 60, 908 S.W.2d 664 (1995). However, exclusive possession of the contraband is not necessary to sustain a charge of possession. *See Cary v. State*, 259 Ark. 510, 534 S.W.2d 230 (1976). Thus, it does not matter where the guns were stored, as long as appellant had access to the guns, and either had control over the guns or the right to control them. *See Nelson v. State*, 84 Ark. App. 373, 141 S.W.3d 900 (2004).

Viewing the evidence in the light most favorable to the State, substantial evidence supports that appellant either personally used the guns or had knowledge of the guns' presence on his property and had the right to control them. That constitutes sufficient proof to sustain his convictions. *See Harper, supra*. Appellant's own testimony and inculpatory statements generally established that he knowingly permitted guns to be stored on his property, and that he personally used the .30-caliber rifle for hunting and used the .45-caliber pistol for protection.

Coupled with that, King's testimony established that appellant exercised actual dominion and control over the .22-caliber rifle, the .30-caliber carbine, and the .45-caliber pistol – appellant personally handed the .22-caliber and the .30-caliber weapons to King and asked King to store them. He later told King to remove the .45 pistol from his bedroom, from under his mattress, where appellant admitted that he kept the pistol. Appellant also asked King to store the pistol.

Finally, McCloud's testimony conclusively established that appellant exercised at least constructive dominion and control over the 12-gauge shotgun that appellant borrowed, which was delivered to his house and stored in a bedroom. When McCloud retrieved the weapon, appellant informed him where it was stored. On these facts, the trial court did not err in denying appellant's motion for a directed verdict challenging the State's proof that he illegally possessed firearms.

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.